

AMENDED IN SENATE MARCH 27, 2008

SENATE BILL

No. 1265

Introduced by Senator Ashburn

February 19, 2008

An act to amend Section 12838 of the Government Code, and to amend Sections ~~3041, 5075,~~ 5075 and 6126 of, and to add Section 5075.2 to, the Penal Code, relating to the Board of Parole Hearings.

LEGISLATIVE COUNSEL'S DIGEST

SB 1265, as amended, Ashburn. Board of Parole Hearings.

Existing law establishes the Department of Corrections and Rehabilitation, and provides that the Board of Parole Hearings is part of that department.

This bill would remove the Board of Parole Hearings from the Department of Corrections and Rehabilitation *and would require the board to operate separately by January 1, 2012.*

~~Existing law authorizes the Board of Parole Hearings to appoint panels for purposes of parole consisting of at least 2 members, as specified, and expresses the intent of the Legislature that except in times of backlog, as specified, the panels shall consist of at least 3 members.~~

~~This bill would provide that the panels consist of 3 or more members, as specified.~~

~~Existing law establishes the Board of Parole Hearings.~~

~~*Under existing law, the secretary of the Department of Corrections and Rehabilitation is accorded the power to appoint all civil service employment positions with the Board of Parole Hearings.*~~

~~*This bill would instead make the board the appointing authority for all civil service employment positions with the board. The bill would*~~

provide that the board would be funded by an appropriation in the Budget Act.

Existing law establishes the duties of the Board of Parole Hearings.

This bill would authorize the board to hire staff as necessary for the board to complete its duties, as specified, *and would specify that as of January 1, 2012, the staff of the board would be completely separate from the Department of Corrections and Rehabilitation.*

Existing law authorizes the Inspector General to conduct audits and investigations of the Department of Corrections and Rehabilitation, as specified.

This bill would authorize the Inspector General to conduct audits and investigations of the Board of Parole Hearings, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12838 of the Government Code is
2 amended to read:

3 12838. (a) There is hereby created in state government the
4 Department of Corrections and Rehabilitation, to be headed by a
5 secretary, who shall be appointed by the Governor, subject to
6 Senate confirmation, and shall serve at the pleasure of the
7 Governor. The Department of Corrections and Rehabilitation shall
8 consist of Adult Operations, Adult Programs, Juvenile Justice, the
9 Corrections Standards Authority, the State Commission on Juvenile
10 Justice, the Prison Industry Authority, and the Prison Industry
11 Board.

12 (b) The Governor, upon recommendation of the secretary, may
13 appoint two undersecretaries of the Department of Corrections and
14 Rehabilitation, subject to Senate confirmation. The undersecretaries
15 shall hold office at the pleasure of the Governor. One
16 undersecretary shall oversee program support and the other
17 undersecretary shall oversee program operations for the department.

18 (c) The Governor, upon recommendation of the secretary, shall
19 appoint three chief deputy secretaries, subject to Senate
20 confirmation, who shall hold office at the pleasure of the Governor.
21 One chief deputy secretary shall oversee adult operations, one
22 chief deputy secretary shall oversee adult programs, and one chief
23 deputy secretary shall oversee juvenile justice for the department.

1 (d) The Governor, upon recommendation of the secretary, shall
2 appoint an assistant secretary, subject to Senate confirmation, who
3 shall be responsible for health care policy for the department, and
4 shall serve at the pleasure of the Governor.

5 (e) The Governor, upon recommendation of the secretary, shall
6 appoint an Assistant Secretary for Victim and Survivor Rights and
7 Services, and an Assistant Secretary for Correctional Safety, who
8 shall serve at the pleasure of the Governor.

9 SEC. 2. ~~Section 3041 of the Penal Code is amended to read:~~

10 3041. (a) ~~In the case of any inmate sentenced pursuant to any~~
11 ~~provision of law, other than Chapter 4.5 (commencing with Section~~
12 ~~1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet~~
13 ~~with each inmate during the third year of incarceration for the~~
14 ~~purposes of reviewing the inmate's file, making recommendations;~~
15 ~~and documenting activities and conduct pertinent to granting or~~
16 ~~withholding postconviction credit. One year prior to the inmate's~~
17 ~~minimum eligible parole release date a panel of three or more~~
18 ~~commissioners or deputy commissioners shall again meet with the~~
19 ~~inmate and shall normally set a parole release date as provided in~~
20 ~~Section 3041.5. No more than one member of the panel shall be a~~
21 ~~deputy commissioner. In the event of a tie vote, the matter shall~~
22 ~~be referred for an en banc hearing by the board. The release date~~
23 ~~shall be set in a manner that will provide uniform terms for offenses~~
24 ~~of similar gravity and magnitude in respect to their threat to the~~
25 ~~public, and that will comply with the sentencing rules that the~~
26 ~~Judicial Council may issue and any sentencing information relevant~~
27 ~~to the setting of parole release dates. The board shall establish~~
28 ~~criteria for the setting of parole release dates and in doing so shall~~
29 ~~consider the number of victims of the crime for which the inmate~~
30 ~~was sentenced and other factors in mitigation or aggravation of~~
31 ~~the crime. At least one commissioner of the panel shall have been~~
32 ~~present at the last preceding meeting, unless it is not feasible to~~
33 ~~do so or where the last preceding meeting was the initial meeting.~~
34 ~~Any person on the hearing panel may request review of any~~
35 ~~decision regarding parole for an en banc hearing by the board. In~~
36 ~~case of a review, a majority vote in favor of parole by the board~~
37 ~~members participating in an en banc hearing is required to grant~~
38 ~~parole to any inmate.~~

39 (b) ~~The panel or the board, sitting en banc, shall set a release~~
40 ~~date unless it determines that the gravity of the current convicted~~

1 offense or offenses, or the timing and gravity of current or past
2 convicted offense or offenses, is such that consideration of the
3 public safety requires a more lengthy period of incarceration for
4 this individual, and that a parole date, therefore, cannot be fixed
5 at this meeting. After the effective date of this subdivision, any
6 decision of the parole panel finding an inmate suitable for parole
7 shall become final within 120 days of the date of the hearing.
8 During that period, the board may review the panel's decision.
9 The panel's decision shall become final pursuant to this subdivision
10 unless the board finds that the panel made an error of law, or that
11 the panel's decision was based on an error of fact, or that new
12 information should be presented to the board, any of which when
13 corrected or considered by the board has a substantial likelihood
14 of resulting in a substantially different decision upon a rehearing.
15 In making this determination, the board shall consult with the
16 commissioners who conducted the parole consideration hearing.
17 No decision of the parole panel shall be disapproved and referred
18 for rehearing except by a majority vote of the board, sitting en
19 banc, following a public hearing.

20 (c) For the purpose of reviewing the suitability for parole of
21 those inmates eligible for parole under prior law at a date earlier
22 than that calculated under Section 1170.2, the board shall appoint
23 panels of at least three persons to meet annually with each inmate
24 until the time the person is released pursuant to proceedings or
25 reaches the expiration of his or her term as calculated under Section
26 1170.2.

27 (d) Hearings will be conducted by a panel of three or more
28 members, the majority of whom shall be commissioners. The board
29 shall report monthly on the number of cases where an inmate has
30 not received a completed initial or subsequent parole consideration
31 hearing within 30 days of the hearing date required by subdivision
32 (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section
33 3041.5, unless the inmate has waived the right to those timeframes.
34 That report shall be considered the backlog of cases for purposes
35 of this section, and shall include information on the progress toward
36 eliminating the backlog, and on the number of inmates who have
37 waived their right to the above timeframes. The report shall be
38 made public at a regularly scheduled meeting of the board and a
39 written report shall be made available to the public and transmitted
40 to the Legislature quarterly.

1 ~~(e) For purposes of this section, an en banc hearing by the board~~
2 ~~means a hearing conducted by a committee of nine randomly~~
3 ~~selected commissioners who are specifically appointed to hear~~
4 ~~adult parole matters, selected by the chairperson. The committee~~
5 ~~shall be comprised of a majority of commissioners holding office~~
6 ~~on the date the matter is heard by the committee.~~

7 ~~SEC. 3.~~

8 *SEC. 2.* Section 5075 of the Penal Code is amended to read:

9 5075. (a) Commencing July 1, 2005, there is hereby created
10 the Board of Parole Hearings. As of July 1, 2005, any reference
11 to the Board of Prison Terms in this or any other code refers to the
12 Board of Parole Hearings. As of that date, the Board of Prison
13 Terms is abolished.

14 (b) The Governor shall appoint 17 commissioners, subject to
15 Senate confirmation, pursuant to this section. Of those 17
16 commissioners, 12 shall be appointed and trained to hear only
17 adult matters, and five shall be appointed and trained to hear only
18 juvenile matters. The terms of the commissioners shall expire as
19 follows: eight on July 1, 2007, and nine on July 1, 2008. Successor
20 commissioners shall hold office for terms of three years, each term
21 to commence on the expiration date of the predecessor. Any
22 appointment to a vacancy that occurs for any reason other than
23 expiration of the term shall be for the remainder of the unexpired
24 term. Commissioners are eligible for reappointment. The selection
25 of persons and their appointment by the Governor and confirmation
26 by the Senate shall reflect as nearly as possible a cross section of
27 the racial, sexual, economic, and geographic features of the
28 population of the state.

29 (c) The chair of the board shall be designated by the Governor
30 periodically. The Governor may appoint an executive officer of
31 the board, subject to Senate confirmation, who shall hold office
32 at the pleasure of the Governor. The executive officer shall be the
33 administrative head of the board and shall exercise all duties and
34 functions necessary to insure that the responsibilities of the board
35 are successfully discharged. ~~The secretary board~~ shall be the
36 appointing authority for all civil service positions of employment
37 with the board.

38 (d) Each commissioner shall participate in hearings on each
39 workday, except when it is necessary for a commissioner to attend
40 training, en banc hearings or full board meetings, or other

1 administrative business requiring the participation of the
2 commissioner. For purposes of this subdivision, these hearings
3 shall include parole consideration hearings, parole rescission
4 hearings, and parole progress hearings.

5 (e) The board shall have its own budget apart from the budget
6 of the Department of Corrections and Rehabilitation and shall be
7 funded by an appropriation by the Legislature in the Budget Act.

8 (f) *As of January 1, 2012, the board shall function as a separate*
9 *state entity, and shall no longer be under the jurisdiction of the*
10 *Department of Corrections and Rehabilitation.*

11 ~~SEC. 4.~~

12 SEC. 3. Section 5075.2 is added to the Penal Code, to read:

13 5075.2. (a) The board is authorized to hire staff as necessary
14 for the board to complete its duties, including, but not limited to,
15 clerical staff, attorneys, and other support staff as needed.

16 (b) ~~It is the intent of the Legislature that the board~~ *The board*
17 *shall develop its own staff so that, to the extent practicable, it will*
18 *not have to rely upon staff from the Department of Corrections*
19 *and Rehabilitation to complete its duties. As of January 1, 2012,*
20 *staff of the board shall be completely separate from the Department*
21 *of Corrections and Rehabilitation.*

22 ~~SEC. 5.~~

23 SEC. 4. Section 6126 of the Penal Code is amended to read:

24 6126. (a) (1) The Inspector General shall review departmental
25 policy and procedures, conduct audits of investigatory practices
26 and other audits, and conduct investigations of the Department of
27 Corrections and Rehabilitation, as requested by either the Secretary
28 of the Department of Corrections and Rehabilitation or a Member
29 of the Legislature, pursuant to the approval of the Inspector General
30 under policies to be developed by the Inspector General. The
31 Inspector General shall review policy and procedures, and conduct
32 audits and investigations of the Board of Parole Hearings, as
33 requested either by a member of the board, or a Member of the
34 Legislature, pursuant to approval of the Inspector General under
35 policies to be developed by the Inspector General. The Inspector
36 General may, under policies developed by the Inspector General,
37 initiate an investigation or an audit of the department or the board
38 on his or her own accord.

39 (2) The Inspector General shall audit each warden of an
40 institution one year after his or her appointment, and shall audit

1 each correctional institution at least once every four years. Each
2 audit shall include, but not be limited to, issues relating to
3 personnel, training, investigations, and financial matters. Each
4 audit shall include an assessment of the maintenance of the facility
5 managed by the warden. The audit report shall include the Inspector
6 General's assessment of facility maintenance. These audit reports
7 shall be provided to the Legislature and shall be made public. The
8 requirements of this paragraph shall be phased in by the Inspector
9 General so that they are fully met by July 1, 2009.

10 (b) Upon completion of an investigation or audit, the Inspector
11 General shall provide a response to the requester.

12 (c) The Inspector General shall, during the course of an
13 investigatory audit, identify areas of full and partial compliance,
14 or noncompliance, with departmental investigatory policies and
15 procedures, specify deficiencies in the completion and
16 documentation of investigatory processes, and recommend
17 corrective actions, including, but not limited to, additional training
18 with respect to investigative policies, additional policies, or changes
19 in policy, as well as any other findings or recommendations that
20 the Inspector General deems appropriate.

21 (d) The Inspector General, pursuant to Section 6126.6, shall
22 review the Governor's candidates for appointment to serve as
23 warden for the state's adult correctional institutions.

24 (e) The Inspector General shall, in consultation with the
25 Department of Finance, develop a methodology for producing a
26 workload budget to be used for annually adjusting the budget of
27 the office of the Inspector General, beginning with the budget for
28 the 2005–06 fiscal year.